

Serial No. 09/817,629  
CRNG.010  
In response the Office Action  
dated June 1, 2004

### Remarks/Arguments

Claims 1-35 are currently pending the above-referenced patent application. Claims 1, 14, 20 and 29 are the independent claims and are amended by way of the present Amendment.

### Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 5, 6, 10, 11, 20, 21, 24-26, 28 and 34 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Khalegi, et al.* (U.S. Patent 6,040,933). For at least the reasons set forth below, Applicants respectfully submit that the present rejection is improper and should be withdrawn.

To properly establish a *prima facie* case of anticipation, *all* of the claimed elements must be found in the prior art. It follows, therefore, that if a *single* claimed element is not found in the prior art, a *prima facie* case of anticipation cannot properly be established.

Claim 1 is drawn to an optimizer for a transmission system between a transmission terminal and a reception terminal having at least two channels. Claim 1 features: *a telemetry link, which includes the processor, and which is disposed between the transmission terminal and the reception terminal.*

For example, in keeping with an embodiment described in conjunction with Fig. 1, a telemetric link 40 is provided between a receiving terminal 40 and a reception terminal 30. Moreover, the telemetry link includes a processor 42. As described in connection with an embodiment, the processor 42 receives output from each receiver 32 and supplies each controller 14 with an appropriate control signal. (Kindly refer to p. 6, line 25-p. 7, line 6 of the filed application.)

It is respectfully submitted that the reference to *Khalegi, et al.* lacks the disclosure of at least the noted features of claim 1. To this end, the reference to *Khalegi, et al.* to channel performance equalization in a wavelength division multiplexed system. The reference to *Khalegi, et al.* discloses a network monitor 18 having inputs 70 and an output 72. The network monitor 18 via the inputs is connected to respective optical amplifiers 38 and their data outputs 46. The output 72 of the network monitor is connected to the optical transmitter control inputs 30.

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Thus, the network monitor 18 links the optical amplifiers to the transmitter control inputs 30. However, the reference to *Khalegi, et al.* specifically lacks the disclosure of at least the telemetry link between a transmission terminal and a reception terminal. Rather, there is a connection between the optical amplifiers 38 and the control inputs 30 via the network monitor. (Kindly refer to column 3, line 23 through column 4, line 9 of *Khalegi, et al.* for support for the above assertions.)

Accordingly, it is respectfully submitted that the reference to *Khalegi, et al.* specifically lacks the disclosure of at least a **telemetry link**, which includes the processor, and which is disposed **between the transmission terminal and the reception terminal**, as featured in independent claim 1. Therefore, because the reference to *Khalegi, et al.* lacks at least the disclosure of at least one feature of each of independent claim 1, it cannot serve to establish a *prima facie* case of anticipation. As such, and for at least the reasons set forth above, it is respectfully submitted that independent claim 1 is patentable over the applied art. Furthermore, at least because these independent claims are patentable, those claims that depend directly or indirectly from claim 1 are patentable.

Independent claim 20 is drawn to a method of optimizing performance of a transmission system between a transmission terminal and a reception terminal. The method includes **providing a telemetry link between the transmission terminal and the reception terminal**.

These features of claim 20 are similar to the features of claim 1 set forth above. Accordingly, for reasons similar to those discussed in detail in connection with claim 1 above, it is respectfully submitted that the reference to *Khalegi, et al.* lacks at least the disclosure of these features. Therefore, because the reference to *Khalegi, et al.* lacks at least the disclosure of at least one feature of each of independent claim 20, it cannot serve to establish a *prima facie* case of obviousness. As such, and for at least the reasons set forth above, it is respectfully submitted that independent claim 20 is patentable over the applied art. Furthermore, at least because this independent claim is patentable, those claims that depend directly or indirectly from claim 20 are patentable.

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### Rejections under 35 U.S.C. § 103(a)

1. Claims 3, 12, 13 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Khalegi, et al.* For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

In addition to other requirements, it is well-established that to establish a proper *prima facie* case of obviousness, all of the elements must be found in the applied art. It follows, therefore, that if a *single* claimed element is not found in the applied art, a *prima facie* case of obviousness cannot properly be established.

Claims 3, 12, 13, and 22 depend from independent claim 1 and independent claim 20, respectively. These independent claims, for reasons set forth above, are patentable over the applied art. Accordingly, and while in no way conceding to the propriety or reasoning of the present rejection, it is respectfully submitted that claims 3, 12, 13 and 22 are patentable over the applied art.

2. Claims 7-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Khalegi, et al.* in view of *Khoe, et al.* (U.S. Patent Number 4,942,568). For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

Claims 7-9 depend from independent claim 1. This independent claim, for reasons set forth above, is patentable over the applied art. Accordingly, and while in no way conceding to the propriety or reasoning of the present rejection, it is respectfully submitted that claims 7-9 are patentable over the applied art.

3. Claims 4, 14-19, 23 and 30-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Khalegi, et al.* in view of *Swanson, et al.* (U.S. Patent 6,433,906). For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

In addition to other requirements, it is well-established that to establish a proper *prima facie* case of obviousness, all of the elements must be found in the

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applied art. It follows, therefore, that if a *single* claimed element is not found in the applied art, a *prima facie* case of obviousness cannot properly be established.

Claims 4 and 23 depend directly or indirectly from claims 1 and 20, respectively. These independent claims, for reasons set forth above, is patentable over the applied art. Accordingly, and while in no way conceding to the propriety or reasoning of the present rejection, it is respectfully submitted that claims 4 and 23 are patentable over the applied art.

Independent claim 14 is drawn to an optimizer for a transmission system between a transmission terminal and a reception terminal having at least two channels. Claim 14 features: *a telemetry link, which includes the processor, and which is disposed between the transmission terminal and the reception terminal.*

As described in connection with the rejection of claim 1, the reference to *Khalegi, et al.* lacks at least the features of claim 14 set forth above. Therefore, because the reference to *Khalegi, et al.* lacks at least the disclosure of at least one feature of each of independent claim 14, it cannot serve to establish a *prima facie* case of obviousness. As such, and for at least the reasons set forth above, it is respectfully submitted that independent claim 1 is patentable over the applied art. Furthermore, at least because these independent claims are patentable, those claims that depend directly or indirectly from claim 1 are patentable.

Independent claim 29 is drawn to a method of optimizing performance of a transmission system between a transmission terminal and a reception terminal. Claim 29 features *providing a telemetry link between the transmission terminal and the reception terminal.*

As described in connection with claim 20, it is respectfully submitted that the reference to *Khalegi, et al.* lacks at least the disclosure of these features. Therefore, because the reference to *Khalegi, et al.* lacks at least the disclosure of at least one feature of each of independent claim 29, it cannot serve to establish a *prima facie* case of obviousness. As such, and for at least the reasons set forth above, it is respectfully submitted that independent claim 29 is patentable over the applied art. Furthermore, at least because this independent claim is patentable, those claims that depend directly or indirectly from claim 29 are patentable. For at least this reason, it

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is respectfully submitted that claims 30-36 are also patentable over the applied art.  
Allowance is earnestly solicited.

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### **CONCLUSION**

In view of the foregoing, reconsideration and withdrawal of all objections and rejections are respectfully requested. Allowance of all pending claims is earnestly solicited.

In the event that there are any outstanding matters remaining in the present application, please contact William S. Francos (Reg. No. 38,456) at (610) 375-3513 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any additional fees that may be required, or credit any overpayment, to Deposit Account No. 50-0238.

Respectfully submitted,

VOLENTINE FRANCOS, P.L.L.C.



William S. Francos, Esq.  
Registration No. 38,456

VOLENTINE FRANCOS, P.L.L.C.  
One Freedom Square  
11951 Freedom Dr.  
Reston, VA 20190  
[wfrancos@volentine.com](mailto:wfrancos@volentine.com)  
(703) 715-0870

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**On: 1 September 2004**

**By:**   
**William Francos**